

1 STATE OF RHODE ISLAND
2 PUBLIC UTILITIES COMMISSION

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7 In Re: Verizon – Rhode Island)
8 Alternative Regulation Plan) Docket No. 3445
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11 Surrebuttal Testimony of
12 Thomas H. Weiss
13 on behalf of the
14 Division of Public Utilities and Carriers
15

16 **Q. MR. WEISS, PLEASE STATE YOUR BUSINESS ADDRESS AND**
17 **OCCUPATION.**

18 A. I am an engineer employed as president of Weiss Consulting, Inc. My business
19 address is 405 Crossway Lane, Holly Springs, NC, 27540.

20 **Q. ARE YOU THE SAME THOMAS H. WEISS WHO EARLIER FILED**
21 **DIRECT TESTIMONY ON BEHALF OF THE DIVISION OF PUBLIC**
22 **UTILITIES AND CARRIERS IN CONNECTION WITH THIS DOCKET?**

23 A. Yes, I am.

24 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY AT**
25 **THIS TIME?**

26 A. I am responding to the rebuttal testimony filed in connection with this docket by
27 Verizon witnesses, Ms. Theresa L. O'Brien, Mr. Arthur D. Silvia, and Dr.
28 William E. Taylor.

29 **Q. AT PAGE 1 OF HER REBUTTAL TESTIMONY, MS. O'BRIEN TAKES**
30 **EXCEPTION TO YOUR RECOMMENDATION THAT THE TERM OF**

1 **THE ALTERNATIVE REGULATORY PLAN BE SET AT THREE (3)**
2 **YEARS. DO YOU HAVE ANY COMMENT?**

3 A. Yes. Ms. O'Brien characterizes my proposal as "arbitrary," and she reiterates
4 Verizon's proposal that the term of the Plan be set at two (2) years apparently
5 because the currently effective Price Regulation Successor Plan ("PRSP") expires
6 after having been in effect for about two years. Contrary to Ms. O'Brien's
7 assertions, however, my proposal for a three (3) year term is no more "arbitrary"
8 than the Verizon proposed two-year term. More importantly, however, Verizon's
9 proposal would eliminate regulation altogether after two years while the
10 Division's proposal would allow the parties to re-visit the form of regulation after
11 expiration of the three-year term. Given the stability and risk mitigating nature of
12 terms of the Division proposal, it seems that Verizon would welcome the longer
13 term.

14 **Q. AT PAGES 1 THROUGH 3 OF HER REBUTTAL TESTIMONY, MS.**
15 **O'BRIEN ARGUES THAT YOUR PROPOSED LIMITS ON INCREASES**
16 **FOR FLAT RATE AND MEASURED RATE PRIMARY RESIDENTIAL**
17 **SERVICE (\$0.50 PER MONTH AND \$0.25 PER MONTH,**
18 **RESPECTIVELY, IN EACH OF THREE YEARS) ARE BARELY**
19 **SUFFICIENT TO KEEP PACE WITH HISTORICAL RATES OF**
20 **INFLATION. HOW DO YOU RESPOND?**

21 A. As I observed in my earlier testimony, my proposal would amount to a total rate
22 increase of \$1.50 applied over the three-year life of the Division's proposed
23 alternative regulatory plan. This Division proposal differs from Verizon's

1 proposal in two principal ways. First, after three years, the Division's proposed
2 plan would result in primary residential rates that reflect only two-thirds of the
3 total increase that would be applied within only two years under the terms of
4 Verizon's plan. Second, and equally important, under Verizon's proposal,
5 primary residential rates could be raised by \$2.00 per month as of the first day on
6 which the new alternative regulatory plan became effective; the Division's
7 proposal would apply increases ratably over a three-year term.

8 Ms. O'Brien is correct to say that the Division's proposal keeps pace with
9 historical rates of inflation; that's precisely what the Division's proposal is
10 intended to do. It is important to note that, unlike previous alternative regulatory
11 plans that the Division has supported, the Division's current proposal specifically
12 does not include an inflation factor offset to account for projected productivity
13 improvements. This approach is eminently fair to both Verizon and to its
14 primary residential service customers.

15 **Q. AT PAGES 2-3 OF HER REBUTTAL TESTIMONY, MS. O'BRIEN**
16 **TAKES EXCEPTION TO YOUR CHARACTERIZATION OF VERIZON'S**
17 **PROPOSED \$2.00 PER MONTH INCREASE TO PRIMARY**
18 **RESIDENTIAL SERVICE RATES AS BEING COUNTER TO THE**
19 **OBJECTIVE OF MAINTAINING AND CONTINUING DEVELOPMENT**
20 **OF UNIVERSAL SERVICE IN RHODE ISLAND. DO YOU HAVE ANY**
21 **RESPONSE?**

1 A. Yes. Ms. O'Brien argues that Verizon's proposed plan specifically addresses the
2 issue of universal service through its provisions related to Lifeline service.¹ The
3 Division is aware of and it agrees with Verizon's proposal to protect Lifeline
4 customers. However, it is not only Lifeline customers that are affected by
5 Verizon's proposal to increase the rates for primary residential service by \$2.00
6 monthly. Today, the highest monthly flat rate for primary residential exchange
7 service from Verizon is \$17.26; thus, a \$2.00 per month increase at the outset of
8 operation under Verizon's plan represent a minimum increase to primary
9 residence exchange rates of approximately 11.6 percent, a percentage increase
10 that would have even non-Lifeline service customers questioning whether they
11 would want to continue taking telephone service. The issue is not just whether
12 just Lifeline customers are being fairly treated with Verizon's proposal, but also
13 whether primary residential service rates are affordable for residential customers
14 generally; the Division believes that an 11.6 percent increase in primary
15 residential flat rates is excessive, and it urges the Commission to adopt the
16 Division's more reasonable (and more broadly affordable) \$0.50 per month
17 increase applied in equal annual steps over the three-year term of the Division's
18 proposed plan.

19 **Q. AT PAGES 3 AND 4 OF HER REBUTTAL TESTIMONY, MS. O'BRIEN**
20 **COMMENTS ON THE DIVISION'S PROPOSAL FOR A FIFTEEN**
21 **PERCENT CAP ON INCREASES IN THE RATES TO BE CHARGED**
22 **FOR OTHER RETAIL SERVICES OVER THE TERM OF THE PLAN.**

¹ Specifically, Verizon's proposal includes a provision that the Lifeline service credit will be

1 **DR. TAYLOR PROVIDES SUPPORT FOR MS. O'BRIEN AT PAGES 15**
2 **AND 16 OF HIS REBUTTAL TESTIMONY. DO YOU HAVE ANY**
3 **REPLY?**

4 A. Yes. The services at issue here are mainly business-oriented services. While the
5 Division understands Verizon's position regarding the prices for such services and
6 the economic rationale behind that position, the Division is also aware that
7 significant and unanticipated cost increases inject additional uncertainty into the
8 business environment. The Division's proposal for a fifteen percent cap on the
9 rates applicable to the affected services is simply an attempt to recognize and
10 limit the degree of that uncertainty for those Rhode Island businesses that rely on
11 Verizon's wire line telephone service.

12 **Q. AT PAGES 6 AND 7 OF HER REBUTTAL TESTIMONY, MS. O'BRIEN**
13 **ARGUES THAT THE DIVISION PROVIDES NO RATIONALE OR**
14 **LEGAL BASIS FOR REQUIRING VERIZON TO CONTINUE**
15 **SUBSIDIZING THE COST OF INTERNET ACCESS FOR SCHOOLS**
16 **AND LIBRARIES IN RHODE ISLAND. DO YOU AGREE WITH MS.**
17 **O'BRIEN?**

18 A. No. The rationale behind the Division's proposal is stated at pages 20-21 of my
19 direct testimony filed on September 25, 2002. However, at pages 6 and 7 of her
20 rebuttal testimony, Ms. O'Brien raises some misleading arguments against the

increased by an amount equal to any increase to the rates charged for primary residence exchange service.

1 Division's proposal. Dr. Taylor weighs in on the issue with similar arguments at
2 page 15 of his rebuttal testimony.

3 At page 6 of her rebuttal testimony, Ms. O'Brien argues that the Division's
4 proposal is "blatantly unfair" and inconsistent with the "competitively neutral"
5 provisions cited at §254(h)(2) of the Telecommunications Act of 1996 ("TA96").

6 Careful reading of §254 reveals it to require the FCC to develop and implement
7 rules and regulations applicable to the advancement of universal service,
8 including "technically feasible and economically reasonable" access to advanced
9 telecommunications and information services for all public and nonprofit
10 elementary and secondary schools. Technically, its is not §254(h)(2) of TA96
11 that defines the requirements for such programs. Rather, it is the FCC's rules
12 developed pursuant to §254 that define the requirements.²

13 The FCC complied with §254 of TA96 in May 1997 when its adopted Part 54,
14 titled "Universal Service," of its Rules and Regulations. Part 54 contains the rules
15 governing universal service support programs, including the high-cost and low-
16 income funds and programs for schools, libraries and rural health care providers.
17 Part 54 also contains rules regarding the local switching support and long term
18 support programs for incumbent local exchange carriers.

19 To the extent that a carrier is subject to universal service contributions and
20 subsidies, §54.515 of the FCC's rules (the text of which is attached as Exhibit No.

² Part 54 rules have survived legal challenges through appropriate levels of appeal. See, for example, *Texas Office of Public Utility Counsel v. Federal Communications Commission and United States of America*, 183 F. 3d 393 (5th Cir. 1999); *Alenco Communications, Inc., et. al. v. FCC and USA* WL 60255 (5th Cir. 1999).

1 1 to this testimony) allows that carrier to treat its contributions to state schools'
2 and libraries' Internet access programs as an offset against the universal service
3 contribution for which the carrier would otherwise be obligated under the
4 provisions of §54, Sub Part H.³ Therefore, by virtue of the FCC's rules, to the
5 extent that a carrier does contribute to state schools' and libraries' Internet access
6 programs, the carrier is not disadvantaged economically by such contributions,
7 because the carrier incurs no additional cost to implement such programs in the
8 state. If Verizon is able to take advantage of §54.515 of the FCC's rules and it
9 does not do so, then Verizon is acting contrary to the interests of both its
10 shareholders and its customers. It is, therefore, wrong for Verizon to suggest, as
11 Ms. O'Brien does at pages 6 and 7 of her testimony, that for the Commission to
12 require Verizon to continue funding the schools' and libraries' Internet access
13 program through December 2005 would place a burden on Verizon that is
14 blatantly unfair and inconsistent with the provisions of TA96.

15 **Q. AT PAGES 1 AND 2 OF HIS REBUTTAL TESTIMONY, MR. SILVIA**
16 **CLAIMS THAT IT WAS NOT FINANCIAL UNCERTAINTY THAT**
17 **CAUSED THE COMMISSION TO ADOPT THE EXOGENOUS EVENT**
18 **PROVISIONS OF PREVIOUS ALTERNATIVE REGULATORY PLANS**
19 **IN RHODE ISLAND. DO YOU AGREE?**

20 **A.** No. Mr. Silvia is mistaken. In reviewing evidence and evaluating proposals for
21 prior versions of alternative regulatory plans for Rhode Island, if the Commission
22 had been omniscient regarding Verizon's financial future, then there would have

³ Sub Part H describes and explains the calculations by which Universal Service Fund contributions

1 been no reason at all for the Commission to have adopted exogenous event
2 provisions. In fact, however, it is the uncertainty of such events that caused
3 Verizon to propose such arrangements in prior plans, for the Division to agree
4 with such provisions and for the Commission to approve them. Even Mr. Silvia
5 agrees that exogenous events are uncertain when, at page 3 of his rebuttal
6 testimony, he states that "... by their very nature, exogenous events cannot always
7 be known in advance, thus the resulting financial impacts of such events cannot
8 be readily assessed and determined in advance."

9 **Q. GIVEN, THEN, THAT THE EFFECTS OF EXOGENOUS EVENTS ARE**
10 **NOT KNOWN WITH CERTAINTY, SHOULDN'T THE DIVISION'S**
11 **PROPOSED TERMS FOR AN ALTERNATIVE REGULATORY PLAN**
12 **INCLUDE A PROVISION THAT ALLOWS VERIZON TO RECOGNIZE**
13 **THE EFFECTS OF EXOGENOUS EVENTS IN THE RATES THAT IT**
14 **WOULD CHARGE FOR SERVICE IN RHODE ISLAND?**

15 A. No. The Division's proposed terms for an alternative regulatory plan allow
16 Verizon to increase the rates it charges for services by a fixed amount on a fixed
17 schedule without any offset for productivity improvements. The Division
18 believes that fixed price increases, coupled with select pricing flexibility, and
19 without provisions to recognize improved levels of productivity constitute terms
20 that are sufficiently generous to allow Verizon to absorb the cost effects of
21 exogenous events.

are determined.

1 **Q. AT PAGE 3 OF HIS REBUTTAL TESTIMONY, WITH RESPECT TO**
2 **YOUR RECOMMENDATION REGARDING THE AMOUNT OF**
3 **EXOGENOUS COSTS THAT SHOULD BE REFLECTED IN RATES**
4 **UNDER THE ALTERNATIVE REGULATORY PLAN, MR. SILVIA**
5 **ARGUES THAT YOUR PROPOSAL IS INCONSISTENT WITH THE**
6 **NATURAL PROGRESSION OF PRICES IN A COMPETITIVE MARKET.**
7 **AT PAGE 16 OF HIS REBUTTAL TESTIMONY, DR. TAYLOR**
8 **SUPPORTS MR. SILVIA. DO YOU AGREE WITH THESE WITNESSES’**
9 **ARGUMENTS?**

10 A. No. According to Mr. Silvia and Dr. Taylor, the effect of exogenous events on
11 the firm is to alter the average cost of the industry and directly affect the average
12 price charged by the industry. In words more directly applicable to the
13 telecommunications industry in Rhode Island, according to Mr. Silvia, “... all
14 carriers would flow these costs through to the ratepayer.” Mr. Silvia is simply
15 wrong.

16 I agree that the effect of exogenous events generally is to increase the *average*
17 cost for the industry. However, I disagree that the industry-wide increase in
18 *average* costs necessarily would be reflected in the average of prices charged
19 throughout the industry. First, prices in a competitive market are not set based on
20 cost but rather on the basis of the demand exhibited for the products that are
21 marketed by the industry. Secondly, to the extent that costs are involved in the
22 pricing decision, it is changes to marginal costs, and not average costs, that are
23 pertinent.

1 **Q. DOES THAT CONCLUDE YOUR TESTIMONY AT THIS TIME?**

2 **A. Yes, it does.**